IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8035 of 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANTABEN W/O BABUBHAI KUBERBHAI

Versus

ISHWARBHAI SOMABHAI

Appearance:

MR AJ PATEL for Petitioner

MR HM PARIKH for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: /11/2000

C.A.V. JUDGEMENT

#. This petition under Article 227 of the Constitution of India filed by the owner of the land (hereinafter described as landlord) arises out of Suo Motu proceedings culminating in the impugned order dated 27-1-1986 of

Mamlatdar in cum A.L.T., Nadiad, taken in exercise of powers under Section 32(1B) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short `the Act'), whereby the agricultural land involved (Survey Number 25 admeasuring 1 acre 20 gunthas of village Palana, Taluka Nadiad, District Kaira) has been restored to the tenant or tiller of the land (represented now by the legal representatives - respondents nos. 1 to 3), treating it to be a case of deemed purchase.

#. The impugned order of the Mamlatdar dated 27-1-1986 has been maintained by the Deputy Collector in Appeal by order dated 7-8-1986 and by the Gujarat Revenue Tribunal in revision by order dated 30-9-1991.

#. The only contention advanced by the learned counsel Shri A.J. Patel is that the provisions of Section 32(1B) of the Act of 1948 were wrongly resorted to by the Mamlatdar, as it was a case of voluntary surrender of the land by the tenant or tiller of the land. Strong reliance has been placed on the decision of the Supreme Court in the case of Dhondiram Tatoba Kadam v. Ramchandra Balwantrao Dubal (1995) 36(1) GLR 344. In order to support the above legal contention that it was a case of voluntary surrender of land by the tiller, the oral statement recorded by the Mamlatdar in the proceedings has been read before me. A copy of his deposition has been supplied to me in the course of hearing of this petition.

#. Learned counsel Shri H.M. Parikh appearing for the legal representatives of the original tenant opposes the petition and has made an effort to support the orders of the Revenue Authorities.

#. In order to appreciate the stand taken and the contention advanced by the learned counsel on behalf of the landlord, it is necessary to examine the nature of the provisions and scope of the power of the Revenue Authorities contained in Section 32(1)(b) of the Act of 1948. The provisions under Section 32 are aimed at conferring ownership rights on the tiller of the land. With that purpose, it has been laid down under subsection (1) of Section 32 that on the 1st day of April 1957, described in the title of the Section as `tillers' day', every tenant shall, subject to the other provisions of the said Act, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon, on the said day, the land held by him as tenant, subject to the fulfillment of several conditions laid down in various sub-sections of the said Section. The Mamlatdar

has been conferred with Suo Motu power to take proceedings for restoration of land to the tiller if the tenant was in possession on the tillers' day, i.e., 1-4-1957 and has subsequently been wrongfully dispossessed without recourse to other provisions of the Act by the landlord. Subsection (1B) of Section 32 of the Act on the basis of which the Suo Motu proceedings had been taken up by the Mamlatdar which is relevant for the decision of this petition, is reproduced in full:

"32. Tenants deemed to have purchased land on tillers' day.

(1) xx xx xx

(1A) xx xx xx

(1B) Where a tenant who was in possession of land on the appointed day and who, on account of his being dispossessed of such land or any part thereof by the landlord at any time before the specified date other wise than in the manner provided in section 29 or any other provision of this Act, is not in possession of such land or any part thereof and such land or part thereof is in the possession of the landlord or his successor-in-interest on the said date and such land or part thereof is not put to a non-agricultural use on or before the said date, then the Mamlatdar shall, notwithstanding anything contained in the said section 29 or any other provision of this Act either suo motu or on an application of the tenant made within the prescribed period hold an inquiry and direct that such land or as the case may be, part thereof shall be taken from the possession of the landlord or as the case may be, his successor in interest, and shall be restored, to the tenant; and thereafter, the provisions of this section and sections 32A to 32R (both inclusive) shall, so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased such land or part thereof on the date on which such land or, as the case may be, part thereof is restored to him:

Provided that the tenant shall be entitled to restoration of land or part thereof, as the case may be, under this sub-section only if he gives an undertaking in writing within such period as may be prescribed to cultivate it personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area:

Provided further that -

(i) if the tenant fails to give such undertaking within such prescribed period, or if the tenant, after giving such undertaking, refuses to accept the tenancy or possession of the lands, the land the possession of which the landlord or, as the case may be, his successor-in-interests is not entitled to retain under this sub-section, or

(ii) if the tenant gives such undertaking and accepts such tenancy or possession of the land, such portion of the land referred to in clause (i) to the restoration of which the tenant would not be entitled under the first proviso,

shall vest in the State Government, free from all encumbrances, and shall be disposed of in the manner provided in sub-section (2) of section 32P.

Explanation. - In this sub-section "successor-in-interest" means a person who acquires the interest by testamentary disposition or devolution or death."

(Underlining for supplying emphasis)

#. A bare look at the provisions, particularly the underlined portion therein, would make it clear that dispossession of the teannt by landlord at any time before specified date `otherwise than in the manner provided in Section 29 or other provisions of the Act' of 1948 has to be ignored for the purpose of recognising the right of the tiller and granting him relief of restoration of possession of the land. Section 29 of the Act of 1948 contains the procedure under which a landlord can regain possession of the land given to the tenant or tiller for cultivation. The procedure indicated in subsection (3A) of Section 29 of the Act is of making an application by the landlord to the Collector or his Nominee for termination of tenancy and for possession of the land.

#. Admittedly, in this case, the petitioner as landlord did not take any proceedings for regaining possession of the land from the tiller and no steps as laid down under Section 29 or in any other provisions of the Act were taken before the Revenue Authorities.

#. The submission made on behalf of the landlord in this petition is that where the tenant or tiller willingly and voluntarily surrenders possession of the land in favour of the landlord, it is not necessary to initiate any proceedings for taking possession by the landlord and the provisions of Section 32(1B) cannot be invoked in favour of such tiller or tenant who has surrendered the land.

#. The decision of the Supreme Court in the case of Dhondiram Tatoba (supra) undoubtedly supports fully the contention advanced on behalf of the landlord that where the tenant has voluntarily surrendered the land, the same cannot be held to be a case of unlawful dispossession of the tiller or the tenant and the provisions of subsection (1B) of Section 32 are not attracted to such case of surrender.

##. The question, however, raised before me is as to whether the case can be said to be one of surrender of the land voluntarily by the tenant or tiller to the landlord. The English translation of the deposition of the tenant has been placed before me. From the said deposition the facts revealed are that the tenant was tilling the land for 18 long years from agriculture year 1955-56. The land was cultivated on crop share basis. The deposition of the tenant in its relevant part states that the landlord approached him with a suggestion that he desired to cultivate the land personally. It is on this suggestion that the tenant handed over the possession of the land to him. There was no order obtained from any court but the possession was handed over voluntarily. On the above statement can it be said that it is a case of voluntary surrender of land by the tenant to the landlord? In the decision of Dhondiram Tatoba (supra), Supreme Court referred to Black's Law Dictionary to construe the word `dispossessed' as used in subsection (1B) of Section 32. Taking help from the dictionary meaning of word `dispossessed' to oust from land by illegal process, to eject, to exclude from reality, the Supreme Court observed:

> "The dispossession should have been, therefore, either by legal process or by physical act of exclusion. It would not include leaving possession voluntarily or by surrender."

##. In order to apply the ratio of the decision in the case of Dhondiram Tatoba (supra), the deposition of the tenant, on which strong reliance has been placed, has to be appreciated in proper perspective and on taking into consideration the common experience that tiller of soil is generally a rustic farmer and under great domination of the landlord under whom he cultivates. If the deposition of the tenant is so read on ground realities of the village life, the statement recorded by the tenant amounts to only saying this : that the land lord suggested and wanted to personally cultivate the land in the in concerned agricultural year much after the

tillers' day, and on the suggestion of the landlord, the tenant allowed the landlord to take possession of the land for personal cultivation. Whether this act and conduct on the part of the tenant or tiller can be held to be a case of voluntary surrender of the land? Let this Court take help of Black's Law Dictionary for understanding the word `surrender'. In the context of landlord - tenant law, Black's Law Dictionary explains the meaning of the word `surrender' thus:

> "In landlord - tenant law, surrender exists when the tenant voluntarily gives up possession of the premises prior to the full term of the lease and the landlord accepts possession with intent that the lease be terminated. It differs from `abandonment' as applied to leased premises, inasmuch as the latter is simply an act on the part of the lessee alone, but to show a surrender, a mutual agreement between lesser and lessee that the lease is terminated must be clearly proved."

##. The landlord suggested the tenant who was tilling the land for last more than 18 years to permit the former to personally cultivate the land and for that purpose the tenant handed over the possession of the land to the landlord. By this act on the part of the tenant there was no intention expressed by him that the lease should permanently stand terminated. In order to construe a surrender, there should be an intention or animus on the part of the tenant to give up all his rights in law as tenant or tiller of the soil. The provisions of the Revenue Law had to be construed keeping in view the known realities of the landlord - tenant relationship in the villages. Mere giving possession to the landlord for personal cultivation does not amount to surrender of his (tenant) rights as tenant by the tiller. By handing over of possession by the tiller inference can not be drawn that he had an intention to surrender all his legal rights as tenant of the land to the landlord. Learned counsel read the statement given in cross-examination by the tenant and contended that he had left possession of the land and has started serving in a mill in Petlad. I have read the statement of the tenant given in the cross-examination. His admission that after handing over land he had gone for service in Petlad mill cannot be read as meaning that only for the purpose of taking up service in the mill he had permanently surrendered his right as tenant in the land. After the tenant handed over the land to the landlord, it is likely that he was never allowed to cultivate and had to make his living by

serving in the mill.

##. From the evidence on the record before the Revenue Authorities, it is not possible to come to a conclusion in favour of the landlord that the tenant had voluntarily surrendered the land with an intention to give up all his rights as a tenant or lessee of the land. The decision of the Supreme Court in the case of Dhondiram Tatoba (supra), therefore, is of no help to the landlord in view of the facts obtaining in this case, as discussed above.

As a result of the discussion aforesaid, this Court finds no error in the judgments of the Revenue Authorities. Consequently, the petition fails and is hereby dismissed.

(D.M. DHARMADHIKARI, C.J.)

[sndevu]